

Submission to the Committee for Health, Social Services and Public Safety on a Legislative Consent Motion for the Protection of Freedoms Bill, 8 June 2011

Role of the Commissioner for Children and Young People

The principal aim of the Commissioner, as set out in legislation, is to safeguard and promote the rights and best interests of children and young people in Northern Ireland. The legislation provides NICCY with a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children. The Commissioner's paramount consideration is the rights of the child and NICCY is required to base all our work on the United Nations Convention on the Rights of the Child.

The protection of children and young people has been a key priority for NICCY since the establishment of the office and we published research in 2005 and 2007 in relation to vetting and barring. We have also provided submissions to legislative and policy reviews of vetting and barring arrangements by both the Northern Ireland and UK governments. We have enclosed our most recent submissions to the UK Public Bill Committee on the Protection of Freedoms Bill and the Northern Ireland Criminal Records Regime Review for information.

Outline of current reviews of vetting and barring arrangements

Currently much work is being done to review and revise arrangements relating to vetting and barring. The Northern Ireland Assembly Legislative Consent Motion passed on 21 March 2011 during the previous mandate enabled many of the provisions of the UK Government's Protection of Freedoms Bill to have territorial extent to Northern Ireland.

In parallel to this process, the Northern Ireland Department of Justice are conducting a Criminal Records Regime Review. This Review will address aspects of the Protection of Freedoms Bill provisions which relate to the management and sharing of criminal records for vetting and barring purposes which do not extend to Northern Ireland.

While these developments are taking place across the remits of different legislative bodies and departments, it is important that consideration of the proposals does not become fragmented and that an overview of developments and their implications for safeguarding children is maintained.

Therefore while we appreciate that the Committee are considering the draft Legislative Consent Motion which relates specifically to the establishment of a new Disclosure and

Barring Service we would like to illustrate some of the broader issues that are central to current debates about vetting and barring.

Role of vetting and barring in protecting children

Vetting and barring regimes play a key part in the arrangements to protect children and young people from abuse by seeking to ensure that adults who pose a risk to children are not placed in roles, paid or voluntary, which enable them to establish relationships of trust which may be exploited.

The arrangements that are currently being reviewed and revised were developed following the Bichard Inquiry after the murder of Jessica Chapman and Holly Wells in Soham by Ian Huntley, a school caretaker, in 2002. Research shows us that where children are abused this is most likely to be perpetrated by those that they know¹ – often family members but also adults in positions of trust and authority have been gained through their work or volunteering with children. The Bichard Inquiry identified a need to strengthen how employers could safely recruit staff and volunteers who would be placed in positions of trust with children.

The UK Government, and de facto the devolved administrations, as a signatory to the United Nations Convention on the Rights of the Child should ensure that the general principles of the Convention, including the paramountcy of the child's best interests and right to life and fullest level of development are reflected in vetting and barring arrangements. Article 19 of the Convention places a particular obligation on government to take all measures to protect children and young people from all forms of violence and abuse. Ensuring that vetting and barring arrangements operate to the highest standard offers an important opportunity for government to fulfil this commitment.

Examples of issues arising from the Protection of Freedoms Bill and the Criminal Records Regime Review

Young people aged 16 and 17 years old

NICCY warmly welcomed the commitment given by the Northern Ireland Health Minister under the previous mandate to place activities with young people aged 16 and 17 year old in settings such as education within the definition of regulated activity. We had expressed our strong reservations about the exclusion of this age group and were pleased that UK Government Ministers also placed work with this age group within the scope of regulated activity.

¹ Cawson P., Wattam C., Brooker S. and Kelly G. (2000) Child Maltreatment in the UK: A Study of the Prevalence of Child Abuse and Neglect, (London: NSPCC).

The definition of regulated activity sets out those positions working with children which would be eligible for a full enhanced criminal records check. Such checks provide employers with all conviction and non conviction information needed to properly assess the suitability of applicants seeking to work with children. These changes now ensure the proposals reflect the definition of a child as set out in the UN Convention and domestic legislation as being up to 18 years of age and recognise that all children and young people should be afforded the same level of protection.

Supervised roles

Our submission to the Protection of Freedoms Public Bill Committee expressed concern that the definition of regulated activity excluded a number of positions which involve frequent and ongoing contact with children. As supervised teaching, training, instruction and care provision are excluded this affects many volunteer posts across schools, faith groups and sporting organisations.² The definition of supervision in such instances must be robustly defined, as noted by organisations such as NSPCC and the Sports and Recreation Alliance, to strengthen the protections that the Bill will offer children and young people.³

We have also noted our concerns that the Protection of Freedoms Bill will lead to criminal records checks for posts outside of regulated activity providing only limited information about individuals. For example, checks will not disclose if the Independent Safeguarding Authority (ISA) has barred a person or share information that may be held by ISA but is not known to the police. This could lead to situations where, for example, an individual barred from regulated activity such as teaching could apply to be a volunteer classroom assistant which is an unregulated post, without the employer receiving barring or other information of concern from ISA. We have highlighted that it is important for the Criminal Records Regime Review to reflect on how to make sure such gaps do not exist in Northern Ireland's safeguarding arrangements.

Barring decisions

The Protection of Freedoms Bill proposals will also mean individuals will only be placed on barred lists if they have been, will be, or are likely to be engaged in regulated activity. As posts which have significant levels of contact with children, such as volunteer assistant sports coaches and classroom assistants, are not within the scope of regulated activity we feel that this high threshold is not appropriate.

² House of Commons Library (2011) Protection of Freedoms Bill Research Paper 11/20, (London: House of Commons Library).

³ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/memo/pf60.htm>
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/memo/pf61.htm>

Police intelligence and non conviction information

It is of great important that relevant non conviction information and police intelligence is available as part of the disclosure process to support employers in making safe recruitment decisions about who should be entrusted to work with children and young people. The Protection of Freedoms proposals will develop a statutory code of practice for the sharing of 'reasonably relevant' non conviction information and we welcome this in principle.

NICCY has drawn attention to the importance of the Criminal Record Regime Review considering how the sharing of conviction and non conviction information across borders can be progressed. As the only jurisdiction in the UK which has a land border with another EU Member State we are acutely aware of the need to ensure that vetting and barring arrangements operate effectively the border. For example, police intelligence and non conviction information is currently not shared between Northern Ireland and the Republic of Ireland.

Legislative Consent Motion

Our understanding of the Legislative Consent Motion (LCM) which the Department is seeking is that it is concerned only with provisions that the UK Government introduced to the Protection of Freedoms Bill late in the Committee stage. These provisions allow for the merging of ISA and the Criminal Records Bureau into one new body – the Disclosure and Barring Service. In Northern Ireland AccessNI provides the disclosure service which processes and issues criminal records checks (this service is provided by the Criminal Records Bureau in England and Wales).

In turn, ISA provides the barring service for Northern Ireland, England and Wales. The key functions of ISA include maintaining the list of individuals who are barred from engaging in regulated activity with children and young people due the risk they pose to children and making decisions about whether to remove an individual from a barred list. Importantly ISA also assess and hold information about referrals they receive, mainly from employers and regulatory bodies, where concerns are raised that individuals working in regulated activity may abuse their position of trust. This is a complex area of work requiring a high level of expertise and is central to ensuring that significant information about those who may seek to harm children is shared across UK jurisdictions as part of vetting and barring protections.

Under the proposals we understand that AccessNI will continue to operate the disclosure service and the new Disclosure and Barring Service, which ISA's functions will be subsumed into, will provide the barring aspect. On the basis of the information we have received, we do not have any substantive concerns regarding the LCM.

Indeed, the changes that will be facilitated by the LCM will both ensure Northern Ireland continues to have a barring service and support the development of some of the positive elements in proposals to revise arrangements. For example, we understand the Disclosure and Barring Service will have a key role in ensuring that criminal records checks will become continuously updated and will be portable and so able to transfer with individuals across similar roles and organisations. These will be progressive steps in simplifying and strengthening arrangements by reducing the number of repeat checks required and ensuring checks remain 'live' and up to date.

It is of course important that these developments are well planned and adequately resourced and it may be helpful for the Committee to ensure that the Department provides details of arrangements between the UK Government and Northern Ireland Executive as they are progressed.

Conclusion

While our comments in relation to the LCM have been limited we hope the Committee have found it helpful to have a broader overview of current debates in vetting and barring. As the Protection of Freedoms Bill continues its legislative passage and the Criminal Records Regime Review is taken forward a clear focus on children must be maintained. Changes should not dilute or fragment the levels of protection afforded to children and young people.

We warmly welcome the Committee's commitment to thoroughly consider all matters coming before it which relate to safeguarding children and young people. While we recognise that vetting and barring arrangements are only one element in how we ensure children are safeguarded, it is an area which NICCY will continue to monitor closely.